IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

CRP.No. 313 of 2007()

(AGAINST THE ORDER DATED 24/02/2007 IN E.A.NO.275/07 IN E.P.NO.337/06 IN OS.287/1997 of PRL.SUB COURT,IRINJALAKUDA)

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PETITIONER/RESPONDENT/DECREE HOLDER:

*** M/S. POPULAR AUTOMOBILES,**
BANERJI ROAD, ERNAKULAM, COCHIN-31, REP. BY
ITS PARTNER, SHRI. FRANCIS PAUL, AGED 44 YEARS,
S/O. K.P.PAUL, RESIDING AT KUTTUKARAN HOUSE,
BANERJI ROAD, ERNAKULAM, KOCHI-31.

***THE NAME OF THE PERSON WHO REPRESENTS THE PETITIONER FIRM IS CORRECTED AS "JOHN.K.PAUL" INSTEAD OF FRANCIS K.PAUL AS PER ORDER DTD. 3/04/07 IN I.A.977/07.**

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.A.V.TELLES
SRI.GEORGE MATHEW

RESPONDENT: PETITIONER/2ND JUDGMENT DEBTOR:

EDDY CURRENT CONTROLS (P) LTD.,
MANAGING DIRECTOR, M.D.JOSE, S/O. DEVASSY,
MOONJELY HOUSE, MURIYADU VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.K.S.BHARATHAN
SRI.MANOJ SUBRAMANIAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.313 OF 2007

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Dated this the 10th day of July, 2007

O R D E R

This revision petition is preferred against the order of the Principal Munsiff's Court, Irinjalakkuda in E.A.No.275 of 2007 in E.P.No.337 of 2006 in O.S.No.287 of 1997. The plaintiff in the suit obtained a decree which was later modified by this court in A.S.No.328 of 1993 to the effect that the plaintiff will be entitled to get from the defendants a sum of Rs.24,761.93 with interest. Defendants in the suit are the company represented by its Managing Director and the Accounts Officer. A perusal of the decree would convincingly establish that the decree had been obtained against the company and not against the individuals. When it is so, the question has to be considered is whether the personal assets of the Managing Director can be attached or sold in execution of the decree. This has been considered by a Division Bench of this Court in ***Kuriakose v. P.K.V.Group Industries (2002(2) KLT 342).*** It has been held therein that the property belonging to the Managing Director cannot be attached for the debts of the company. Learned counsel for the revision petitioner has

brought to my notice the unreported decision of this court in W.A.No.962 of 2004. It was an appeal preferred against the order in W.P.(C)No.33359 of 2003. There, proceedings was initiated against a Director for recovery of the revenue dues and a learned single Judge of this Court held that it cannot be proceeded against one member alone in isolation of the other Directors or office bearers, as the case may be. This was affirmed by the Division Bench.

2. Learned counsel would argue that the Managing Director can be proceeded personally against the realisation of the amount. Now one has to hold that what is put in execution is the decree passed by a civil court. The decree makes it clear that the liability is of the company and not individuals. The decree does not specify that the personal properties of the Managing Director can be proceeded against. So the decree only permits the decree holder to proceed against the assets of the company. When it is so and as per the decision reported in 2002(2)KLT 343 the decree holder cannot proceed personally against the assets of the Managing Director. There is factual difference between the unreported decision and the case on hand. Therefore

I agree with the finding of the learned Munsiff and confirm his order.

C.R.P. is therefore dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-